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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,143	08/16/2001	Violetta Silfver	0104-0359P	1276

7590 06/23/2004

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EXAMINER

SWEET, THOMAS

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/930,143

Applicant(s)

SILFVER, VIOLETTA

Examiner

Thomas J Sweet

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-17,50 and 51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 is/are allowed.
- 6) ☒ Claim(s) 1-3,5 and 9-16 is/are rejected.
- 7) ☒ Claim(s) 6-8,50 and 51 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments, see Claim Objections, filed 5/3/04, with respect to claim 50 have been fully considered and are persuasive. The claim objection of claim 50 has been withdrawn.

Applicant's arguments, see pages 16-17, filed 5/3/04, with respect to the rejection of claims 6 and 17 have been fully considered and are persuasive. The 35 USC §102 rejection of claims 6 and 17 has been withdrawn.

Applicant's arguments with respect to claims 1-3, and 9 have been considered but are moot in view of the new ground(s) of rejection. Rejections based on the newly cited reference(s) follow.

Allowable Subject Matter

The indicated allowability of claims 4-5 and 10-16 is withdrawn in view of the newly discovered reference(s) to Boynton et al (US 6,520,982). Rejections based on the newly cited reference(s) follow.

Claim 17 is allowed.

Claims 6-8 and 50-51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5, and 9-16 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Boynton et al (US 6,520,982). Boynton et al discloses a non-invasive method for treating cells (Col 1, lines 1-15) affected by at least one oncogenic virus (inherent since lesions/tumors includes the common wart which is caused by Human papilloma virus, Stedman's medical dictionary), comprising the steps of: providing a substance comprising at least one of ozone, an ozone donor, oxygen and an oxygen donor (abstract, Col 8, lines 27-36); and subjecting an area of body tissue comprising cells to said substance said affected (col 3, line 25) wherein said step of subjecting comprises the steps of (figure 1):

guiding said substance to said area (via 15);

treating said affected cells by means of said substance (at 31);and

guiding used substance away from said area (via 16).

Despite Boynton et al not specifically naming an oncogenic virus or the common wart it is the Examiner position that lesions and/or tumors inherently includes the common wart which is caused by Human papilloma virus according to the Stedman's medical dictionary. However, if the common wart is not considered included by the disclosure of a lesion or tumor, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize this device and method on a common wart since it is well known that a wart is a skin lesion with a subcutaneous tumor (i.e. nucleus).

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With regard to claim 2, the tissue constitutes at least a portion of an organ (skin).

With regard to claim 3, a common wart, which is caused by Human papilloma virus based on Stedman's medical dictionary, is a lesions/tumors.

With regard to claim 5, peroxide inherently would desiccate the treated cells.

With regard to claim 9, peroxide is a liquid and the substance holder (18) is provided and positioned at said area (31).

With regard to claim 10, Boynton et al discloses a substance holder (18) sealingly enclosing (Col 4, lines 45-51) said area (31) such that a chamber is defined by said substance holder (18) and said body tissue of said area (31); and an underpressure is created within said chamber (Col 4, lines 45-51).

With regard to claim 11, Boynton et al discloses monitoring parameters indicating status and progression of the treatment (Col 7, lines 31-37).

With regard to claim 12, Boynton et al discloses the step of controlling said parameters (Col 7, lines 51-53).

With regard to claim 13, Boynton et al discloses duration of the treatment and temperature at said area (Col 7, lines 31-37 and 51-53).

With regard to claim 14, as seen in figure 1 the controlling at (21) is preformed remotely from treatment area (31).

With regard to claim 15, a pump is used to guide said substance away from said area. (Col 4, lines 45-51).

With regard to claim 16, as seen in figure 1.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schmidt et al. (US 6028104).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J Sweet whose telephone number is (703) 308-4018. The examiner can normally be reached on 6:30 am - 5:00pm, M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M McDermott can be reached on (703) 308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tjs


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